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# EXHIBIT B

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waters within such territory. Sec. 29.575 (10), Stats.; *Olson v. Merrill*, 42 Wis. 203; *Willow River Club v. Wade*, 100 Wis. 86.

If the old bed of the Rock River—though at times a dry run,—has, during certain seasons of the year, periods of navigable capacity, then, during such periods, the general public has a right, in open season, to hunt, fish and trap upon its waters. Sec. 29.575 (10), Stats.; *Olson v. Merrill*, *supra*; *Willow River Club v. Wade*, *supra*.

It appears that the drainage ditch which has been cut lengthwise through the marsh has been dredged to a depth much deeper than the old river bed of the Rock River and thus diverts the water from the old channel of such river. Hence, such drainage ditch becomes the new channel of the Rock River. The Rock River is a navigable stream. *In re Horicon Drainage District*, 136 Wis. 227. Hence all rights and incidents of navigation attach to the drainage ditch which must be considered as the new channel of such river. It is, therefore, the opinion of this department that the general public has a right to hunt, fish and trap, in open season, upon the waters of this drainage ditch.

The general public has, however, no right to hunt, trap or fish upon the waters of the lateral ditches. The sole purpose of such ditches is to drain the surrounding land, and, unlike canals or rivers, they are not intended for use as highways of commerce or pleasure. Since such lateral ditches are not navigable the general public has no right to trap upon such waters.

CAE

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*Appropriations and Expenditures—Legislature—Special Session—Live Stock—Bovine Tuberculosis*—Where special session is called by governor to make emergency appropriation in addition to that already provided for bovine tuberculosis eradication, action is not permitted on any proposed amendments to statutes relating to maximum specific indemnities to be paid upon condemnation and slaughter of animals.

April 15, 1926.

HENRY A. HUBER,  
*Lieutenant Governor.*

Referring to the proclamation by the governor, calling the present special session of the legislature, which in part reads as follows:

"To appropriate the sum of \$450,000 as an emergency appropriation to the department of agriculture to be used exclusively for the payment of indemnities to the owners of diseased animals, heretofore or hereafter condemned by the order of the livestock sanitary board \* \* \*,"

you inquire whether an amendment may be received to the bovine tuberculosis emergency appropriation bill, providing for the appropriation mentioned, where such amendment proposes to increase or decrease the maximum indemnity which the state is to pay for animals condemned and slaughtered.

Sec. 11, art. IV, Const., provides:

"The legislature shall meet at the seat of government at such time as shall be provided by law, once in two years, and no oftener, unless convened by the governor *in special session*, and when so convened *no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened.*"

Your question must be answered in the negative.

The appropriation which it is proposed to increase as provided in the call of the governor is contained in sec. 20.60, Stats., and reads:

"There is appropriated from the general fund to the department of agriculture:

"\* \* \*

"(2) (a) On July 1, 1925, six hundred fifty thousand dollars and annually beginning July 1, 1926, for a term of five years, seven hundred fifty thousand dollars, for the purposes of carrying on the work of bovine tuberculosis eradication, and the payment of indemnities on animals condemned and slaughtered according to the provisions of chapter 94 of the statutes, under the area test plan, the accredited herd plan, and the local testing plan by established, practicing veterinarians, whose work is approved by the department of agriculture. \* \* \*"

Ch. 94, Stats., contains a provision as follows:

"For each animal condemned and slaughtered the owner shall receive in addition to the net salvage upon the certificate of the department of agriculture and the state shall pay the owner in cases coming under the co-operative agreement between the state and the United States a sum equal to one-fourth of the difference between the net salvage and the appraised or agreed value of the animal, but additional payment shall not exceed forty-five dollars for a registered bovine and twenty dollars for an unregistered one. In other cases the owner shall receive in addition to the net salvage, and the state shall pay, half of the

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difference between the net salvage and the appraised or agreed value, but not more than ninety dollars for a registered bovine and forty dollars for an unregistered bovine." Sec. 94.16, subsec. (1).

Your inquiry squarely raises the question whether the call of the governor permits bringing before this special session of the legislature for action any proposed amendments to any of the provisions under ch. 94 relating to the payment of indemnities to owners of animals condemned.

It is apparent from the wording of the call that the subject matter is the total amount of appropriation to be made available for payment of indemnities. The governor has no power to limit the action of the legislature upon the specific subject included in the call. In other words, the legislature is in no sense bound by any indication he gives as to the amount to be appropriated. The legislature has no power to take any action on any subject not included in the call under the provision that "no business shall be transacted except as shall be necessary to accomplish the special purpose for which it was convened."

In the present instance the wording of the call indicates that the special purpose was not a revision of the provisions relating to the condemnation and slaughter of diseased animals and the payment of indemnities to be paid thereon and expenses connected therewith, but merely the one question of the aggregate appropriation to be available for these purposes.

The constitution has vested with the governor the sole determination of whether or not a special session shall be held at all, and with that the sole determination in case a special session is called of the special purposes of such special session. It follows, therefore, that under the wording of this call dealing solely with the total appropriation mentioned, the appropriation is the special purpose, and the action of the legislature is limited to the consideration of that special purpose.

This is in accord with the opinion of Attorney General Morgan given to the special session of 1922, XI Op. Atty. Gen. 249, in which it was held that any bill relating to the subject of the prevention of frauds under the income tax law or to correct or prevent errors or to impose penalties for violations or making appropriations for these purposes was included within the call for the special session of 1922, but that a bill dealing with the exemptions under the income tax law was not included.

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